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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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11 BOARD OF TRUSTEES OF THE SHEET	)	NO. C 07 3204 PJH
METAL WORKERS, et al.,	)	
	)	NOTICE OF MOTION AND
12 Plaintiffs,	)	MOTION FOR DEFAULT
	)	JUDGMENT AND
13 vs.	)	ATTORNEYS' FEES;
	)	POINTS AND AUTHORITIES
14 MTB INC., etc.,	)	IN
	)	<u>SUPPORT THEREOF</u>
15 Defendant.	)	[F.R.C.P. 55(b)(2)]
16 _____	)	

DATE: March 5, 2008  
TIME: 9:00 a.m.

17  
18 TO DEFENDANT:

19 PLEASE TAKE NOTICE that on Wednesday, March 5, 2008, at  
20 9:00 a.m., or soon thereafter as counsel may be heard, before the  
21 Honorable Phyllis J. Hamilton, Judge of the United States District  
22 Court, Northern District of California, 450 Golden Gate Avenue,  
23 Courtroom 3, 17<sup>th</sup> Floor, San Francisco, CA, plaintiffs BOARD OF  
24 TRUSTEES OF THE SHEET METAL WORKERS HEALTH CARE PLAN OF NORTHERN  
25 CALIFORNIA, SHEET METAL WORKERS PENSION TRUST OF NORTHERN  
26 CALIFORNIA, SHEET METAL WORKERS LOCAL 104 VACATION, HOLIDAY SAVINGS  
27 PLAN; ANTHONY ASHER, TRUSTEE, will and do move this court, pursuant  
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1 to Rule 55(b)(2) of the Federal Rules of Civil Procedure, to enter  
2 a default judgment and award plaintiff unpaid contributions,  
3 liquidated damages, interest, court costs, and attorneys fees.

4 This motion is made on the grounds that defendant has  
5 failed to appear herein after valid service, the default of  
6 defendant was entered by the Court on September 26, 2007, and there  
7 are no triable issues of fact or disputes at law. Defendant has  
8 a contractual obligation to pay contributions to the SHEET METAL  
9 WORKERS HEALTH CARE PLAN OF NORTHERN CALIFORNIA, SHEET METAL  
10 WORKERS PENSION TRUST OF NORTHERN CALIFORNIA, SHEET METAL WORKERS  
11 LOCAL 104 VACATION, HOLIDAY SAVINGS PLAN, and has failed to do so  
12 in a timely manner. This motion is based upon this Notice,  
13 Memorandum of Points and Authorities in Support Thereof, the  
14 Declarations of Carl Sanchez, Bonnie Maraia, and Michael J.  
15 Carroll in Support of Motion for Default Judgment filed herewith,  
16 and such further oral or documentary evidence as may be presented  
17 at the hearing of this motion.

18 DATED: January 22, 2008 ERSKINE & TULLEY

19  
20 By: /s/ Michael J. Carroll  
21 Michael J. Carroll  
Attorneys for Plaintiffs

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 I.

INTRODUCTION

24 In this ERISA collection action plaintiffs, BOARD OF  
25 TRUSTEES OF THE SHEET METAL WORKERS HEALTH CARE PLAN OF NORTHERN  
26 CALIFORNIA, SHEET METAL WORKERS PENSION TRUST OF NORTHERN  
27 CALIFORNIA, SHEET METAL WORKERS LOCAL 104 VACATION, HOLIDAY SAVINGS  
28 PLAN; ANTHONY ASHER, TRUSTEE, seek to recover employee benefit

1 contributions, liquidated damages and interest for the months of  
2 December 2005, May 2006, April 2007 and June 2007 on Employer  
3 Account Numbers 358200 and 358201/666. The total amount due is  
4 \$17,125.33.

5 Defendant, MTB INC., a California corporation, is an  
6 employer which is currently delinquent in its health & welfare,  
7 pension and other fringe benefit contribution obligations.

8 Under the terms of the Trust Agreements a contribution is  
9 due not later than the 20th day of the following month, Exhibit 2,  
10 Item III, Section B, page 8, and is delinquent if not received by  
11 that date.

12 The complete list of delinquent months and amounts is set  
13 forth in Exhibit 3 to the Maraia Declaration. The amounts due have  
14 been computed based on information given to the Trust Funds by  
15 defendant. Obviously the amount may change by the date of the  
16 hearing if defendant either makes payments or falls further behind.  
17 Plaintiffs will update this information by a supplemental  
18 declaration if a change in the amount due occurs.

19 Under the terms of the Trust Agreement of the Sheet Metal  
20 Workers Pension Trust of Northern California to which defendant is  
21 specifically bound by its contract, failure to make timely payment  
22 results in the following consequences:

- 23 A. Liquidated damages in an amount equal to  
24 20% of the amount of contributions due, Exhibit  
25 2, Item III, Section C, page 9, and the amended  
26 procedures attached to Exhibit 2.  
27 B. Interest at rates determined by formula,  
Exhibit 2, Item III, Section C, page 9.  
28 C. Attorneys fees, Exhibit 2, Item III,  
Section E, page 12.

The other trust agreements contain the same language.

## II.

FACTUAL BACKGROUND

Defendant has entered into a collective bargaining agreement with Sheet Metal Workers Local Union No. 104 which requires that health & welfare, pension and other fringe benefit contributions be paid on behalf of covered employees to the Sheet Metal Workers of Northern California Trust Funds. Exhibit 1 to the Sanchez Declaration. This contract binds defendant to the terms and conditions of each of the Agreements and Declarations of Trust of each Trust Fund of plaintiff. See Exhibit 2 to the Maraia Declaration, the Agreement and Declaration of Trust of the Sheet Metal Workers Pension Trust of Northern California.

## III.

SEPARATE STATEMENT OF UNDISPUTED FACTS

Every essential allegation of the complaint is proved by the affidavits submitted herewith:

<u>COMPLAINT</u> <u>PARAGRAPH</u>	<u>COMPLAINT ALLEGATION</u>	<u>PROOF OF</u> <u>ALLEGATION</u>
1	Jurisdiction	Carroll Decl. 29 U.S.C. § 1132, 1145; 29 U.S.C. § 185(a)
2	Status of Plaintiffs	Carroll Decl.
5	Defendant bound by contract to pay contributions	Sanchez Decl., Exhibit 1
6,7,8,10	Defendant has failed to pay contributions in a timely manner	Maraia Decl., Exhibit 3
9	Demand has been made	Carroll Decl.
12	Contract documents provide for attorneys fees	Exhibit 2

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IV.  
ARGUMENT

5 A. PLAINTIFFS ARE ENTITLED TO RECOVER LIQUIDATED DAMAGES,  
6 INTEREST AND ATTORNEYS FEES AS A MATTER OF LAW

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An award of liquidated damages, interest and attorneys'  
fees is mandatory under 29 U.S.C. § 1132(g).

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CONCLUSION

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It is respectfully submitted that plaintiffs are entitled  
to default judgment according to proof.

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DATED: January 22, 2008

ERSKINE & TULLEY

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By: /s/ Michael J. Carroll  
Michael J. Carroll  
Attorneys for Plaintiffs

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PROOF OF SERVICE

I, DIANE ANDRADE, the undersigned, hereby certify and declare under penalty of perjury that the following statements are true and correct:

1. I am a citizen of the United States and employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within above entitled action.

2. My business address is 220 Montgomery Street, Suite 303, San Francisco, California 94104.

3. On January 22, 2008 I caused a true copy of the attached documents NOTICE OF MOTION AND MOTION FOR DEFAULT JUDGMENT & ATTORNEYS' FEES; POINTS & AUTHORITIES IN SUPPORT THEREOF; DECLARATIONS OF CARL SANCHEZ, BONNIE MARAIA, MICHAEL J. CARROLL IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT; ORDER AND DEFAULT JUDGMENT to be served on the following person(s) in the manner indicated below:

MTB Inc.  
Attn: Gabriela Keane  
620 Petaluma Blvd. N., Suite C-2  
Petaluma, CA 94952

: Served by deposit in the United States mail in a sealed envelope with the postage thereon fully prepaid.

Executed on January 22, 2008 at San Francisco, California.

/s/ Diane Andrade  
DIANE ANDRADE